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IN THE

Supreme Court of The United States

October Term, 1972

No. _____

RALPH R. WILLIAMS,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

Petitioner herein, Ralph R. Williams, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio, denying an appeal entered November 17, 1972.

STATEMENT OF JURISDICTION

The decree of the Supreme Court of Ohio was entered November 17, 1972, denying appeal.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and this Court's rule 19 (a), inasmuch as the petitioner has been denied due process of law under Amendment XIV of the Constitution and statements by the petitioner were obtained in violation of Amendment V of the United States Constitution. Further, there was an illegal search and seizure in violation of the IV Amendment of the United States Constitution.

QUESTIONS PRESENTED

1. A person may not be convicted of a crime on the basis of evidence obtained through the use of a search warrant when the affidavit in support of the search warrant does not allege adequate facts to show probable cause for the search.

2. Statements of the petitioner should not have been allowed into evidence when the statements were obtained by coercive means by Columbus, Ohio, Police Officers.

3. The case against the petitioner should have been dismissed because the state failed to establish the corpus delicti of the alleged crimes.

4. The confession and gun seized from the petitioner was the basis of the "fruit of the poisonous tree" and should have been suppressed from evidence.

APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES OF THE OHIO REVISED CODE.

This case involves the following:

Constitutional Provisions

1. Amendment IV to the Constitution of the United States dealing with search and seizure, which is appended hereto as Appendix "A".

2. Amendment V to the Constitution of the United States dealing "self incrimination, which is appended hereto as Appendix "B".

3. Amendment XIV to the Constitution of the United States dealing directly with denial of due process of law and Section 1 thereof, which is appended hereto as Appendix "C".

STATE STATUTES

1. Ohio Revised Code Section 2923.01, which is appended hereto as Appendix "D".

2. Ohio Revised Code Section 2933.23, which is appended hereto as Appendix "E".

3. Ohio Revised Code Section 2933.24, which is appended hereto as Appendix "F".

4. Ohio Revised Code Section 3719.20(A), which is appended hereto as Appendix "G".

5. Ohio Revised Code Section 3719.101, which is appended hereto as Appendix "H".

STATEMENT OF THE CASE

The petitioner, Ralph R. Williams, was indicted by the Franklin County Grand Jury and charged with possession for sale of narcotic drugs, 3719.20 (A) Ohio Revised Code; permitting the use of a dwelling under his control for the illegal keeping of narcotic drugs 3719.101 Ohio Revised Code.

All charges grew out of a search made by the Columbus Police Department pursuant to a search warrant.

Your petitioner filed a timely motion to suppress all physical evidence contending the search warrant was defective in that the affidavit did not establish probable cause for its issuance. Further, a motion to suppress oral statements was made because it was contended said statements were obtained by coercive methods employed by the police after and during the arrest of the petitioner.

The affidavit was for a location namely 980 Caldwell and reads as follows to-wit:

> "Information received from an informant who deals in narcotics within 980 Caldwell within the last 12 hours this being the home of one male, colored subject known only as Ralph. The narcotics Bureau has received numerous complaints on a male, colored subject known as Ralph at the Bolivar Arms area."

The evidence showed that 980 Caldwell was an apart-

ment complex with a minimum of 23 apartments within and using 980 Caldwell plus an apartment number.

The evidence also was to the effect the police ultimately located apartment #23 and conducted a search therein. Your petitioner arrived during the search was immediately arrested and told that if he didn't admit his guilt everyone in the apartment including an elderly woman and children would be arrested. During the period of arrest a gun was found in his possession.

After this had been repeated to him several times the petitioner made certain incriminating statements to stop the arrest of the various individuals.

The trial court admittedly stated the statements were the basis of conviction after both motions were overruled.

REASONS WHY THIS WRIT SHOULD BE GRANTED

As to Question 1.

An affidavit submitted to a magistrate in order to obtain a search warrant must set forth sufficient factual information to enable the magistrate to conclude probable cause exists.

The petitioner contends that all evidence seized should have been suppressed because the affidavit used to obtain the search warrant was inadequate to show probable cause.

The affidavit contained within the search warrant reads as follows:

"Information received from an informant who deals in narcotics and who states he has seen narcotics within the last 12 hours, this being the home of one male, colored subject known only as Ralph. The narcotics Bureau has received numerous complaints on a male, colored subject known as Ralph at the Bolivar Arms area."

Breaking down the aforesaid affidavit, what does it really say?

1. The affidavit does not relate the informant was reliable or creditable or has given reliable and creditable information in the past.

2. It does not say narcotics were seen at 980 Caldwell Place, Apartment #23, which was the apartment ultimately searched.

3. It does not state the complaints received pertained to narcotics nor the address 980 Caldwell, Apartment #23.

4. The affidavit does not recite that "Ralph was ever seen at 980 Caldwell, Apartment #23.

It is clear on its face the affidavit does not spell out language which creates probable cause for the issuance of a search warrant.

During a special voir dire an attempt was made to bolster the affidavit by the use of oral testimony that the issuing magistrate had been given further information.

Ohio Revised Code Sections 2933.23 and 2933.24, state in effect if the affidavit contained in a search warrant does not set forth sufficient facts to permit the magistrate to determine that probable cause exists "the search warrant issued pursuant to such defective affidavit is invalid and void" *Akron vs. Williams*, 175 Ohio State 186, paragraph one of the syllabus, (1973).

Further, the authorities are clear that the affidavit must be self-sufficient in the matter of probable cause, and cannot be bolstered by oral testimony. In that connection see; *Cleveland Heights vs. Spellman*, 7 Ohio Misc, 149; *Poldo vs. U.S.*, 55 F. 2d 866; *People vs. Carminatei*, 236 N.Y. 2d 921; *Dumbra vs. U.S.*, 268 U.S. 441.

Certainly the facts contained in the affidavit do not recite sufficient evidence to show the reliability or credit-

ability of the informant, nor sufficient information he actually deals in narcotics, nor that he could identify narcotics, nor that he had any dealings with the petitioner. But most importantly how can you decide from the affidavit the informer was reliable or creditable without alleging he had given reliable or creditable information the past that has proven to be true and factual.

Perhaps the most important criteria is drawn from *Aguilar vs. Texas*, 378 U.S. 108 and applied in *Spinelli vs. United States*, 393 U.S. 410, 21 L.Ed 637.

> "The tip does not contain sufficient statement of the underlying circumstances from which the informer concluded that Spinelli was running a bookmaking operation. * * * * It is not alleged that the informant personally observed Spinelli at work or ever placed a bet with him."

It is abundantly clear the petitioner's rights provided by the IV Amendment of the U.S. Constitution against illegal searches and seizures has been violated and as such was denied due process of law as applied to the various states by virtue of the XIV Amendment of the U.S. Constitution. Apply all of the law and the cited Constitutional Amendments all evidence should have been suppressed.

AS TO QUESTION 2.

The record clearly reflects that the petitioner refused to sign a waiver of rights form used by the Columbus Police Department. The record is obviously clear the defendant never intended to talk to police officers except for the fact that the officers threatened to arrest other individuals if he did not make statements. The record further reflects that if the petitioner did make the statements no one else would be arrested and charged.

In *United States vs. Jenkins*, 9 CRL 2071, 7 Cir. Ct. App. (March 25, 1971) the court held as follows:

> "Once a defendant indicates he does not wish to waive his *Miranda* rights, any subsequent admission or statements are inadmissable."

Brown vs. State, 9, CRL 2327, Ind. Sup. Ct., (June 1971) held as follows:

> "Once a defendant refuses to sign a written waiver of rights form, if the interrogation continues without counsel for the defendant, a heavy burden rests on the State to show the defendant knowingly and intelligently waived his privilege against self incrimination."

State vs. Watson, 9 CRL 2327, N.Mex. Ct. App. (July 2, 1971) held as follows:

> "Confessions should be suppressed, even when Miranda warnings are given, the State must prove the absence of coercion, threat or improper inducements, which it cannot do when the officer fails to deny the promise he made."

The record is confused by the testifying officer as to where statements were made by the petitioner. It was admitted by the officer that the statements, "I could arrest all adults, and take the children away," were made both at 980 Caldwell, Apartment #23 and at police headquarters. It should be further noted the record reflects that after the defendant refused to sign the rights waiver, he was told by the officer, "You might as well talk, we have you anyway," and again reminded all persons at 980 Caldwell Place, Apartment #23 could be arrested.

The petitioners testimony on void dire cannot be overlooked when he stated he would not have made any statements if it had not been for the threats of arrest of the adults and children.

Jackson vs. Denno, 378 U.S. 368, 12 L. Ed 908, 84 S. Ct. 1774, held as follows:

"1. The burden of proof as to the voluntariness of a confession rests on the prosecution.

2. The fourteenth Amendment forbids the use of involuntary confessions not only because of the unreliability of confessions obtained in a manner deemed coercive, but also because of a strongly felt attitude of society."

The trial court admittedly relied on these statements for the conviction of the defendant. Without these statements, the record is completely void of other corroborating evidence with which to convict the petitioner.

Here again we have an absolute violation of the V Amendment to the United States Constitution and a denial of due process of law as applied to the various states by virtue of the XIV Amendment of the United States Constitution. Further, after refusing to sign the rights waiver the petitioner was denied the right of counsel as provided by the VI Amendment of the United States Constitution.

The record clearly reflects there were threats and promises made to induce the incriminating statements from the petitioner and all of his aforementioned constitutional rights violated and his statements should have been suppressed.

People vs. Matlock, 336 P 2d 505, held as follows:

"A confession coerced by a threat to arrest a near relative is not admissable."

Also, see *People vs. Trout*, 354 P 2d 231; *People vs. Jones*, 221 Cal. App. 2d 37; *People vs. Mansiquez*, 231 Cal. App. 2d 725, *State vs. Longmore*, 178 Neb. 509, 134 NW 2d 66.

AS TO QUESTION 3.

To afford the petitioner due process of law as provided by the XIV Amendment to the United States Constitu-

tion, the state must prove the corpus deliciti of the alleged crimes.

Other than the statements erroneously admitted into evidence there was not one iota of evidence to establish the petitioner was involved in any criminal activity.

The uncontroverted evidence is clear that one Shirley Wilson rented the apartment. Further, the petitioner was not seen living in the apartment at any time. The evidence showed the officers never saw the petitioner prior to his entrance during the raid nor did they know the petitioner. Other than the petitioner's statements there is a complete lack of evidence to show petitioner had possession or control of the dwelling, or that he had possession or control of narcotics, or that he had been involved in narcotics in any manner whatsoever.

State vs. Scarberry, 114 O.A. 85 held as follows:

> "In a criminal case, the presentation of some probative evidence, outside the confession is essential as a pre-requisite to admission of the accused's confession in evidence."

30 Am. Jur. 2d, Evidence, Section 1136, page 308, reads as follows:

> "* * * * the general rule is well settled in this country that a naked extrajudicial confession of guilt by one accused of a crime, uncorroborated by any other evidence is not sufficient to warrant or sustain a conviction. * * * *"

Smith vs. United States, 348 U.S. 147, 99 L. Ed 192, 72 S. Ct. 194, said:

> "The general rule that an accused may not be convicted on his own uncorroborated confession has been previously recognized by this court. . . . and has consistantly applied in the lower Federal Courts in the overwhelming majority of State Courts. . . . (Ohio follows rule) Its purpose is to prevent 'errors

> in conviction based upon untrue confessions'. . . . (question of validity of confession exists herein) its foundation lies in long history of judicial experience with confessions and the realization that sound law enforcement requires police investigations which extend beyond the words of the accused. Confessions may be unreliable because they are reduced or coerced, and although separate doctrines exclude involuntary confessions from consideration of the jury, ... further caution is warranted because the accused may be unable to establish the involuntary nature of the statements."

To emphasize the foregoing a great deal of the alleged confession of the petitioner proved to be untrue, as stated by the officer testifying in relation to the confession. Further, the statement by the trial court and appended hereto, relates that if it were not for the statements of the petitioner the Court's decision would have been otherwise.

The State simply failed to prove the corpus delicti of the alleged crimes and was denied his constitutional rights as provided by the V and XIV Amendments to the United States Constitution.

AS TO QUESTION 4.

The arguments contained herein is predicated upon the proposition that the search warrant was invalid and all evidence discovered and all statements of the petitioner are the "Fruits of the Poisonous Tree."

The "Fruit of the Poisonous Tree' doctrine has expressed the exclusion of oral evidence, the admissions of a defendant when confronted with evidence obtained in an illegal search.

A standard for determining whether proffered evidence is fruit of the poisonous tree was enunciated in

Wong Sun vs. United States, 371 U.S. 471, 9 L.Ed. 2d 441, 83 S. Ct. 407.

State vs. Rogers, 27 Ohio Ops 2d 105, 94 Ohio L. Abs, 110, 198 N.E. 2d 796, held as follows:

> "Testimony of a witness discovered in the course of an unlawful search of an automobile in which he and a defendant were inadmissable under a rule that a witness discovered as a result of an illegal search is not competent to testify in a criminal prosecution."

The theory behind the exclusionary rule is that if it were not for the illegal activity of the police they would not have known of the witness or defendant. Further, the act must me a direct result of the illegal action of the police.

The facts contained herein are that the police were searching the premises known as 980 Caldwell Place, Apt. 23, by virtue of an invalid search warrant. The petitioner entered the premises during the search, was immediately arrested and searched. During the search of his person a gun was found and subsequently statements were induced or coerced from the petitioner. There was a continuing connection between the search of the petitioner and the statements and the illegal searching of the premises. In fact, if it were not for the illegal search the gun and the incriminating statements would never have been found or uttered.

The People vs. Harold E. Johnson, 70 Cal. 2d 541, 75 Cal P ptr. 401, 450 P. 2d 865, Cert den 395 U.S. 969, 23 L Ed 2d 758, 89 S. Ct. 2120 held as follows:

> "A confession was the fruit of a unlawful search, despite the existence of intervening acts, were induced by the authorities' exploitation of the search, and the confession, in turn, was induced by the exploitation of the acts."

It was further held in *People vs. Johnson, supra*:

"Once an accused has established a relationship between unlawful police activity and evidence or confession to whose introduction he objects, the burden is on the prosecution to show the unlawful taint has been dissipated."

City of Akron vs. Williams, 175 OS 186, held as follows: (pages 189-190)

"The officers were on the premises by virtue of an invalid vitiates any subsequent acts which arose as a result thereof. Even as an illegal search may not be made legal by the evidence found thereby, neither can it be said that where the officers are illegally on the premises as a result of an invalid warrant then can justify their illegal presence by subsequent occurrence.

Such a holding would be equivalent to giving the authorities a free license to enter one's property without legal justification and then have such entry legalized by subsequent events."

Also, see *State vs. Reese*, 19 Ohio App. 2*d* 303.

"Fruit of the Poisonous Tree" doctrine is to the effect that unlawful search taints not only evidence obtained by the search but facts discovered by process initiated by an unlawful act." *State vs. Hogen*, (Iowa), 137 NW 2*d* 546.

People vs. Reason, 52 Misc. 2*d* 425, 276 NYS 2*d* 196, held as follows:

"If fruits of crime or contraband are revealed as result of unconstitutional police procedure, such fruits or contraband must be suppressed as "fruits of the poison tree," in absence of waiver.

There is abundant evidence in the record that your petitioner has had his constitutional rights guaranteed by IV, V, and XIV Amendments of the United States Constitution, violated, and that the gun found on his person and all statements induced were the results of illegal police activity. Further, the prosecution did not

and could not show that the unlawful taint had been dissipated and therefore the gun and confession of the petitioner should have been suppressed.

CONCLUSION

It is obvious the questions raised by the petitioner clearly puts into issue the violation of safeguards provided by the Constitution of the United States. It is of great importance for citizens of the State of Ohio and elsewhere that individuals be protected against unwarranted searches in the privacy of their homes, that they not be induced or coerced to make involuntary confessions and that they not be denied due process of law in that the state be permitted to convict on the uncorroborated, tainted, confessions of a defendant.

Respectfully submitted,
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CERTIFICATE OF SERVICE

A copy of the foregoing "Petition for Certiorari" was mailed in triplicate to the Office of the Franklin County Prosecutor this 9th day of February, 1973, to the Franklin County Court House, Mound and High Streets, Columbus, Ohio 43215.

JERRY WEINER
Attorney for Petitioner

APPENDIX "A"

Amendment IV to the Constitution of the United States

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX "B"

Amendment V to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX "C"

Amendment XIV to the Constitution of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunites of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "D"

Ohio Revised Code Section 2923.01.

Carrying of concealed weapons.

No person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person. This section does not affect the right of sheriffs, regularly appointed police officers of municipal corporations, regularly elected constables, and special officers as provided by sections 311.07, 737.10 1717.06, 1721.14, and 2917.32 of the Revised Code, to go armed when on duty. Deputy sheriffs and specially appointed police officers, except as are appointed or called into service under said sections may go armed if they first give bond to this state, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them. Persons injured by such improper use may have recourse on said bond.

Whoever violates this section shall be fined not more than five hundred dollars, or imprisoned in the county jail or workhouse not more than one year or both.

Whoever violates this section, having previously been convicted of or pleaded guilty to the commission of carrying a concealed weapon or of any felony contained in sections 2901.01 to 2901.06, inclusive 2901.08 to 2901.13, inclusive 2901.19 to 2901.34, inclusive, 2905.01, 2905.02, 2905.031, 2905.041, 2907.02 to 2907.21, inclusive, and section 3719.20 of the Revised Code, shall be imprisioned not less than three nor more than ten years.

APPENDIX "E"

Ohio Revised Code Section 2933.23.

Affidavit for search warrant.

A warrant for search shall not be issued until there is filed with the judge or magistrate an affidavit particularly describing the house or place to be searched, the person to be seized, the things to be searched for and seized, and alleging substantially the offense in relation thereto, and that the complainant believes and has good cause to believe that such things are there concealed, and he shall state the facts upon which such belief is based. The judge or magistrate may demand other and further evidence before issuing such warrant. If the judge or magistrate is satisfied that grounds for the issuance of a warrant exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched.

APPENDIX "F"

Ohio Revised Code Section 2933.24

Contents of search warrants.

A warrant for search shall be directed to the proper officer, and, by a copy of the affidavit inserted therein or annexed and referred to, shall show or recite all the material facts alleged in the affidavit, and particularly describe the things to be searched for, the house or place to be searched, and the person to be searched and seized. Such warrant shall command the officer to search such house or place or person named or described for the property or other things, and to bring them, together with the person to seized, before the judge or magistrate. The command of the warrant shall be that the search be made in the daytime, unless there is urgent necessity for a

search in the night in which case a search in the night may be ordered. Such search warrant shall be returned by the officer holding the same not later than three days after issuance. It shall designate the judge or magistrate to whom it shall be returned, if such judge is available.

APPENDIX "G"

Ohio Revised Code Section 3719.20 (A) Prohibitions

No person shall:

(A) Possess for sale a narcotic drug except in accordance with the provisions of sections 3719.01 to 3719.22, inclusive, of the Revised Code;

APPENDIX "H"

Ohio Revised Code Section 3719.101

Prohibited use of building or vehicles

No person shall knowingly permit the use of any store, shop, warehouse, dwelling house, vehicle, boat, aircraft, or any other place whatever owned or controlled by him for the illegal keeping, dispensing, or administering of narcotic drogs.

APPENDIX "I"

IN THE COURT OF APPEALS

FRANKLIN COUNTY, OHIO

No. 72AP-26

STATE OF OHIO,

Plaintiff-Appellee,

vs.

RALPH RONALD WILLIAMS,

Defendant-Appellant.

DECISION
Rendered on June 13, 1972

MR. GEORGE C. SMITH, Prosecuting Attorney,
MR. C. WILLIAM BROWNFIELD, JR., Assistant,
Franklin County Courthouse,
Columbus, Ohio,
For Plaintiff-Appellee.

MR. JERRY WEINER,
171 East Livingston Avenue,
Columbus, Ohio,
For Defendant-Appellant.

REILLY, J.

This is an appeal from a verdict and judgment of the Court of Common Pleas, Franklin County, Ohio. No. 72AP-26

Prior to trial a hearing upon a motion to suppress narcotics, firearms, ammunition, and other evidence from being introduced at the trial was conducted before the Common Pleas Court. The crux of the defense motion was that a warrant from a judge of the Franklin County Municipal Court September 25, 1970, and used that day by the Columbus police in a search of premises at 980 Caldwell Pl., Apt. 23, was defective as written and was not properly supported by the information submitted to the judge by the officers seeking the warrant.

Officer Willie Mauldin of the Columbus Police Department Vice Squad was examined by defense counsel after identification of the search warrant. He testified that the warrant was directed to a search of an address typed on the affidavit as well as upon the style of the warrant and the warrant itself as "980 Caldwell." The number "23" was written in black ink, designating the apartment to be searched. Officer Mauldin stated that he personally inserted the apartment number at the time

the judge reviewed the affidavit. At the same time, he said he wrote the number "23" on the style and the warrant. The relevant part of the affidavit is as follows:

> "The facts upon which such belief is based are as follows: information received from an informant who deals in narcotics and who states that he has seen narcotics within 980 Caldwell within the last 12 hours, this being the home of one male, colored subject known only as Ralph. The Narcotics Bureau has received numerous complaints on a male, colored subject known as Ralph from the Boliver Arms area."

When the affidavit was presented to the judge, Officer Mauldin told him that he had previously worked with the informant mentioned in the affidavit; that the same informant had brought him eleven bags of heroin that day and that he had been a source of reliable information. Further, the officer said he was taken to appellant's apartment by the informant prior to the issuance of the warrant.

Appellant testified at the hearing. He stated that he was shown the warrant when he arrived at Caldwell Pl. but it did not include the number "23" when he saw it. He testified on cross-examination that he looked at the warrant for "about three minutes" at the apartment, while handcuffed, and that he was unfamiliar with search warrants. He stated that the next time he saw the warrant was in his attorney's office.

The trial judge overruled the motion. He wrote the following in the pertinent part of his decision and entry:

> "The warrant in this instance, defendant's exhibit 'A,' meets the requirements of *State* v. *Joseph*, 25 Ohio St. (2d) 95 and *State* v. *Haynes*, 25 Ohio St. (2d) 264. Reliability of the informant is indicated by the identification as one 'who deals in narcotics'

and the credibility is supplied by words indicating recent, personal observation.

"There was conflict of testimony between that of the officer and that of defendant whether the unit identification ('#23') was written before the Judge signed the warrant. The officer, witness Mauldin, testified that he was positive that it was. That testimony is more persuasive than that of defendant, whose time for inspection and observation at the time of service of the warrant was limited."

Subsequently, appellant went to trial before judge and jury. Appellant waived the jury during the state's presentation and the case was tried to conclusion by the court.

Officer Mauldin's trial testimony was that September 25, 1970, with the search warrant considered at the previous hearing, he along with several other officers entered 980 Caldwell Pl., number 23, Franklin County, Ohio. An older lady and three or four children were present. He stated that appellant was also there most of the time while a search was conducted for narcotics.

The search revealed the following, identified and admitted as exhibits:

Exhibit 1 was identified by the officer as a large bag which included a large cellophane packet filled with a green plant material and a green, white pill; white tablets in a pill bottle from "beneath or between mattresses bed" in the first bedroom searched, later identified by police chemist as methadone; a plastic envelope with a dark licorice-like substance inside taken from the same bedroom dresser, identified by appellant as "raw opium"; and 184 pink packets with tinfoil, containing a white powder substance, subsequently analyzed and identified by the police chemist as opiates of the narcotic morphine.

Exhibit 2 included approximately $1000 in cash, found hanging in sweater pockets in that bedroom, as well as three .22 caliber pistols. A large jar containing a white substance was found under the bed. The three handguns and the lactose were identified as Exhibit 2.

Exhibit 3 also contained items found in the bedroom including one hashish pipe, marijuana cigarette papers, a "spoon cooker" and several plastic bags commonly used in packaging narcotics.

Exhibit 4 was a .22 caliber Panzer 2-shot handgun, loaded with two live rounds of .22 caliber ammunition, taken from appellant's person in a pat-down on the premises as he arrived.

Appellant was upstairs with the officers during the search of the bedrooms and at that time stated "There's no need searching that (other) (bed) room because everything I had was—is in this room." Further, while still at the apartment, appellant told Officer Mauldin that he and Shirley Wilson, allegedly his common law wife, lived at 980 Caldwell Pl., No. 23. He requested the police not to file charges against her because "Shirley didn't have anything to do with what was going on there."

Appellant was taken to police headquarters, booked, and read a statement of his constitutional rights (Exhibit No. 5) which he refused to sign. A case history was made by an officer at the station, and appellant reiterated the Caldwell Pl. address. He talked with police officers concerning the crimes charged. He did not indicate that he chose to stop talking or have an attorney present.

Appellant's case included testimony from his grandmother, Myrtle Coleman, and Ernestine Randall, a neighbor at apartment 20 of the Caldwell Pl. address. Mrs. Coleman testified that she and appellant had lived alone

together twelve years at 1295 Brookcliff Rd. She stated that appellant was unmarried and that she had been to 980 Caldwell, No. 23 "once or twice" a year or so ago "more or less." Ernestine Randall testified that she had seen appellant at No. 23 "two or three times"; that police officers were at her door September 25, 1970; that she told them she didn't know where "Ralph" lived. She also testified that some of the apartment doors did not have numbers and that on her apartment door No. 20, the "0 had dropped off or something happened to it."

The testimony of Harold Sawyer, manager of the Columbus Metropolitan Housing Authority, was proffered without objection, that No. 23 Caldwell Pl. was leased to Shirley Wilson.

The court returned guilty verdicts as to counts 2, 3 and 4 of the four-court indictment, including illegal possession of narcotics for sale, keeping a house for sale of narcotics and unlawful carrying of a concealed weapon. The first count, illegal possession of narcotics, was apparently *nolle prossed*. Thereupon, this appeal was perfected, including the assertion of three assignments of error.

The first assignment of error is the following:

> "The trial court was in error in not sustaining the motion to suppress based upon an illegal and defective search warrant."

Chief Justice O'Neill, in *State* v. *Haynes* (1971), 25 Ohio St. 2d 264, finding an affidavit and search warrant valid, wrote at pages 268-269 as follows:

> "* * * In determining the reliability of the information, the magistrate must consider the facts presented to him, and if such facts would cause a reasonable man to believe there are grounds for believing that the contraband is on the premises sought to be searched, he is justified in believing in

the reliability of the informant. It must be remembered that the probable cause necessary to justify the issuance of a search warrant requires less facts than are necessary for conviction, and the amount and method of proof is less strict. *Jones* v. *United States* (1960), 362 U. S. 257.

"In this type of case, the court is concerned with probable cause, not certainty, and this extends to the determination of the reliability of the informer. It is not necessary to show uncontrovertible proof that the informer is reliable, but only that such information would cause a neutral and detached officer to believe there is sufficient substance to the statement to justify a search of the premises. Here, the magistrate was presented, not only with the name of the informer, but also with the facts that such informer had identified appellant's picture; that he had turned over to the police material which he stated he had purchased on the premises; and that an analysis of that material proved it to be marijuana. Further, affiant stated of his own knowledge that he knew the appellant, lessee of the premises, had engaged in narcotic law violations. When all the facts are considered, we find, as a matter of law, that there were reasonable grounds for the magistrate to accept the informant's statements as being reliable.

"Therefore, the affidavit and the search warrant were valid."

The Municipal Judge, in addition to the contents of the affidavit, was also apprised of the following information, quoted from pages 12-14 of the motion to suppress record:

"Q. Thank you, Officer. Now, Officer Mauldin, did you yourself receive this information from the unnamed informant?

"A. Yes.

"Q. Had you ever used this informant in the past?

"A. Yes.

"Q. Would you estimate, or could you estimate

approximately how many times you had used him?

"A. About seven.

"Q. Now, the seven times you had used him, had the information he furnished you proved to be reliable?

"A. Yes.

"Q. Now, Officer, I take it from your affidavit that the informant indicated he had actually seen the narcotics in this particular apartment?

"A. Yes, sir.

"Q. Prior to executing the affidavit to secure the search warrant, Officer, did you see the apartment yourself?

"A. Yes.

"Q. And would you explain to the Court on what basis, how you came to be there?

"A. The informant took me back and pointed the apartment out.

"Q. Now, Apartment 23, Officer, is that the ground floor?

"A. Yes. It is in the flats on the ground floor.

"Q. In the flats. Now, Officer, the affidavit which you have identified as being signed by Judge Gillie when Judge Gillie was down in Municipal Court does indicate that the informant indicated to you he saw the narcotics at 980 Caldwell. Did you inform Judge Gillie that you had used this informant in the past?

"A. Yes.

"Q. Did you inform him approximately how many times you had used him?

"A. Yes. I told Judge Gillie and also that the informant had brought me, brought into me 11 bags of heroin.

"Q. Did you inform Judge Gillie prior to the time of this search warrant being executed that the informant had given you reliable information in the past?

"A. I did.
"Q. And had proved to be credible?
"A. Yes.
"MR. MILLER: That's all. Thank you."

This case is distinguishable from *State* v. *Joseph* (1971), 25 Ohio St. 2d 95, and *State* v. *Brehm* (1971), 27 Ohio St. 2d 239, in which search warrants were found defective. In those cases, however, no other information was conveyed to the issuing judge, except the allegations contained in the affidavit.

The sufficiency of search warrants issued under state law must be tested against the federal constitutional standards regarding probable cause prescribed by the United States Supreme Court. *Mapp* v. *Ohio* (1961), 367 U. S. 643, 6 L. Ed. 2d 1081; *Ker* v. *California* (1963), 374 U. S. 23, 10 L. Ed. 2d 726. Moreover, we recognize that where probable cause is concerned, the standards established by *Aguilar* v. *Texas* (1964), 378 U. S. 108, and followed in *Spinelli* v. *United States* (1969), 393 U. S. 410, must be observed. The test we must apply is included in *Aguilar* at pages 114-115:

> "Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones* v. *United States*, 362 U. S. 257, the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, see *Rugendorf* v. *United States*, 376 U. S. 528, was 'credible' or his information 'reliable.' Otherwise, 'the inferences from the facts which lead to the complaint' will be drawn not "by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime,' * * *."

In this case, the officer conveyed additional information to the judge along with the allegations of the affidavit. Considered together, they met the requirements of probable cause. Therefore, appellant's first assignment of error is not well taken.

Appellant's second assignment of error is the following:

> "The trial court was in error in allowing into evidence statements of defendant over objection of the defense."

Appellant was taken to Columbus Police Headquarters after his arrest and presented with a statement of his constitutional rights. The form including his rights was read by appellant personally and also read to him by the police. The statement, admitted into evidence as Exhibit 5, had signature line for the accused where he could sign the waiver of rights. Appellant indicated he could read and that he understood what he was reading. He refused to sign the waiver. He stated during *voir dire* that "he wasn't signing no papers, no kind of papers period."

Whereupon, Officer Mauldin and appellant engaged in a "free and loose" conversation concerning the facts relating to the arrest. In sum, appellant told the police that he was involved in the narcotics traffic on a consignment basis; that two women brought narcotics to Columbus by airplane. A Detroit telephone number was given to the police, from which appellant obtained the drugs. Appellant received one for every three bags of narcotics he sold. Hence, the statement not, in essence, coercive.

The opinion of the Supreme Court in *Miranda* v. *Arizona* (1966), 86 S. Ct. 1602, at page 1612, is noteworthy:

> "* * * the prosecution may not use statements, whether exculpatory or inculpatory, stemming from

> custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. * * *"

The record discloses that the "*Miranda* warnings" were given to appellant in this case. Furthermore, the *Miranda* test does not require that a written waiver form be signed for a defendant to relinquish his rights knowingly and intelligently. And it is not required that a criminal suspect, after being advised of his rights, may not thereafer voluntarily speak and implicate himself in a crime for which he is later indicted.

In any event, appellant's involvement in the crime was otherwise apparent, including his admission of ownership of the materials, made while the police searched his bedroom; the circumstance that his common law wife lived there; and that appellant, named "Ralph" (as the informant had called the resident of the premises), arrived at the scene with a loaded revolver; are facts which hardly dissociate appellant with the crime. Considered in its entirety, the record reveals

sufficient evidence for conviction, even without appellant's statements at police headquarters.

Consequently, appellant's second assignment of error is not well taken.

Appellant's third assignment of error is that:

> "The trial court was in error in allowing into evidence the gun seized from the defendant—such search being the fruit of the poison tree."

This is directly related to the first assignment of error. Since we have found the affidavit admissible, the search thereunder is not invalid, ass "fruit of the poison tree." Thus, appellant's third assignment of error is not well taken.

Whereupon, we find that appellant's assignments of error are not well taken and are, therefore, overruled. The judgment of the trial court is affirmed.

STRAUSBAUGH and HOLMES, JJ., concur.

APPENDIX "J"

THE SUPREME COURT OF THE STATE OF OHIO

No. 72-647

APPEAL FROM THE COURT OF APPEALS

THE STATE OF OHIO, CITY OF COLUMBUS.

STATE OF OHIO,

Appellee,

vs.

RALPH RONALD WILLIAMS,

Appellant.

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the

appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ____ day of _____, 19____.

_____Clerk

_____Deputy

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No. 72-1123

IN THE

Supreme Court of The United States

OCTOBER TERM 1972

RALPH R. WILLIAMS,

Petitioner

vs.

STATE OF OHIO,

Respondent

STATEMENT OF THE CASE

On June 24, 1971, a hearing on a motion to suppress the introduction of narcotics, firearms, ammunition, and other evidence at the trial of Petitioner, Ralph R. Williams, was conducted before the trial court. The substance of the defense motion was the assertion that a warrant issued on September 25, 1970 by another member of that court and utilized by the Columbus Police that same day in conducting a search of the premises at 980 Caldwell, Apt. 23, was defective as written and was insufficiently supported by the information presented to the judge by the officers seeking the warrant.

Following identification of the search warrant, an officer of the Columbus Police Vice Squad was examined in court by defense counsel. His recorded testimony indicated that the warrant was directed to the search of an address, *typed* on the affidavit and on the style of the warrant and on the warrant itself, as "980 Caldwell."

Written in black ink beside that number was "#23", indicating the apartment to be searched.

The officer stated that he personally wrote in the apartment number at the same time the judge reviewed the affidavit, the police secretary having omitted it in typing. He also penned the number "23" on the style of the warrant and on the warrant itself at the same time. Inspection of the color of ink (black) used for the signature of the officer on the warrant return and in the affidavit, as opposed to the color of ink (blue) used in the itemization on the return and apparently written by another officer, bore this out.

At the time the affidavit was presented the police officer advised the court that he had used the informant before, that he had furnished reliable information, and that he had brought the officer eleven bags of heroin that day. Also, the officer had gone to the defendant's apartment with the informant prior to issuance of the warrant, and apartment 23 had been specifically pointed out. The defendant took the stand at the hearing following testimony for the prosecution and stated that he was shown the warrant when he arrived at the Caldwell Pl. residence, but that it lacked the inked-in "#23" when he saw it.

The court reserved its ruling on the motion at the close of the presentation of evidence until briefs could be filed. By decision and entry rendered on November 29, 1971 the motion was overruled, the court stating its reliance upon the testimony of the police officers as opposed to the conflicting statements of the defendant himself.

The testimony of the officer presented at trial showed that on September 25, 1970, he and several other officers entered the premises at 980 Caldwell Pl., No. 23, where

an "older lady" and three or four children were present. A search was conducted therein for narcotics, during most of which time the defendant was also present.

State's Exhibit number 1, identified as a large bag by the officer, contained: a large cellophane packet filled with a green plant material and a pill; white tablets, later analyzed as methadone, taken from "beneath or between mattresses of the bed" in the first bedroom searched; a plastic envelope containing raw opium taken from the same bedroom dresser; and 184 pink paper packets with tinfoil, containing a white powder substance later analyzed and identified by the police chemist as opiates of the narcotic morphine. Hanging in sweater pockets in that bedroom were found approximately $1,000.00 in cash and three .22 caliber pistols. Exhibit 3, also containing items found in the bedroom, consisted of one hashish pipe, marijuana cigarette papers, a "spoon cooker", and several plastic bags said to be used to package narcotics. Exhibit 4 consisted of a loaded .22 caliber handgun, taken from the defendant's person in a pat-down on the premises as he arrived.

During the search of the bedrooms the defendant, who was upstairs with the officers, stated, [t]here's no need searching that [other] [bed] room because everything I had was — is in this room." Further, while at the apartment, the defendant informed a police officer that both he and one Shirley Wilson, stated by the defendant to be his common-law wife, lived at 980 Caldwell Pl., No. 23. The defendant also requested the police not to file charges on Shirley Wilson because "Shirley didn't have anything to do with what was going on there."

Following his arrest Ralph Williams was taken to police headquarters, booked and read a statement of his

constitutional rights which he refused to sign. Thereafter, a case history was filled out by Officer Woodard at the station, with the defendant restating that his address was 280 Caldwell Pl., No. 23.

Although he had been read and advised of his constitutional rights, the defendant, who was described as "cooperative," "freely and loosely" related to Officers Mauldin and Woodard the circumstances surrounding the crimes charged. At no time did he indicate that he wished to stop talking or that he wished an attorney to be present. All suggestions of coercion were vehemently denied by the police at trial.

Following the admission of all exhibits and final arguments the court returned a verdict of guilty as to Counts 2, 3, and 4, of the four-count indictment, these being the offenses of illegal possession of narcotics for purposes of sale, keeping a house for illegal sale of narcotics, and unlawful carrying of a concealed weapon, respectively.

LAW AND ARGUMENT

I

THE SEARCH WARRANT

As a general rule, searches supported by warrants are to be preferred to searches conducted without the benefit of judicial scrutiny. As a result, in a doubtful or marginal case a search under a warrant may be sustainable where one without it would fail. *United States* v. *Ventresca*, 380 U.S. 102 (1965), citing *Jones* v. *United States*, 362 U.S. 257 (1960). The facts in the instant case, however, do not represent one of those marginal situations.

Probable cause is tested against presentation of evidence to a magistrate granting a warrant to search and may rest upon evidence which is not legally competent in a criminal trial. *Draper* v. *United States*, 358 U.S. 307 (1959). Thus, the fact that the evidence as to reliability of an informant is hearsay does not invalidate the affidavit, and the fact that the full name of the eventual defendant is not known does not invalidate the warrant. Contrary to defense counsel's argument, it is absolutely irrelevant that the affidavit does not state that the informant saw the defendant at 980 Caldwell. The affidavit does contain the assertion that the informant "has seen narcotics within 980 Caldwell within the last 12 hours, this being the home of one male colored subject known only as Ralph." The purchase of 11 bags of heroin by the informant was conducted at 980 Caldwell Pl., No. 23, on the same day the search warrant was served.

As the Supreme Court stated in *Ventresca*, *supra*, at 108:

"* * * If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. * * *"

The trial court's finding herein as to the validity of the warrant should be sustained to preserve "a system of justice responsive both to the needs of individual liberty and to the rights of the community." *Ventresca, supra,* at 112. The two tests of *Aguilar* v. *Texas,* 378 U.S. 108, 114 (1964) requiring that "the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed * * * was 'credible' or his information 'reliable'," are both fully satisfied in this case.

The informant had bought narcotics at 980 Caldwell, No. 23, within the previous 12 hours and the police officer had viewed the premises in the company of the informant prior to the issuance of the warrant. The informant had been used by that same police officer "about seven" times in the past.

II

STATEMENTS MADE BY THE DEFENDANT

Following his arrest Ralph Williams was transported to Columbus Police Headquarters and presented with a statement of his constitutional rights. That statement,

admitted into evidence, contained a signature line by which a person could indicate his waiver of those rights, including the right to remain silent, and the right to have the assistance of legal counsel before questioning. The form containing these rights was read by the defendant himself and was read to him by the police. He indicated to the officers that he could read and that he understood what he was reading. He also refused to sign the waiver, which fact was stated on the face of the document. The reason for this refusal, as stated by defendant himself during *voir dire*, was that "he wasn't signing no papers, no kind of papers period."

After asking the defendant for personal data, all of which information except his address was immaterial to the eventual merits of the case, the police engaged Ralph Williams in a "free and loose" conversation concerning the facts surrounding his arrest. At no time did the defendant indicate that he wished to stop talking with the officers or that he wanted an attorney present, and on *voir dire* the defendant did not contradict the officer's testimony in this regard.

The substance of the information given the police by the defendant was that he worked at the trafficking of narcotics in the Columbus area on a consignment basis; that two women in an apparently large scale narcotics operation would bring narcotics to Port Columbus by plane, returning then to their point of departure. For every three bags of narcotics he sold, Ralph Williams received one. The telephone number of a place in Detroit was given to the police, from which the defendant obtained the drugs.

In the case at bar it is first important to note that the very "warnings," which the opinion in *Miranda* v. *Arizona*, 384 U.S. 435 (1966) decision compelled the

police to give an accused prior to his interrogation, were fully and adequately given to the defendant. Secondly, the *Miranda* holding does not make it necessary that a *written* form of the required advice be utilized by the police or that the defendant sign a *written* waiver of his rights in order to relinquish them "knowingly and intelligently." Finally, it is clear that some act or statement on the part of the defendant in positive exercise of the rights in question must be asserted in order to halt the questioning. Nowhere in *Miranda* or in any case following to date has it been held that a criminal suspect, having been advised of his rights, may not thereafter voluntarily speak even where he implicates himself in a crime for which he is later indicted and tried. This is the very purpose of the warnings now required, which is to insure that any confession or incriminating statement is of such an untainted nature as to enable its use in court.

While it might be argued under some circumstances that a refusal of the waiver of constitutional rights on a written form may indicate a continuing desire on the part of the accused to remain silent, his subsequent conduct to the contrary logically overrides whatever significance this initial refusal might take and removes the conditions of refusal. *United States* v. *Bayer* (1947), 331 U.S. 532, 540-541. Those conditions obviously cease when the defendant speaks of his own free will to the police.

The trier of fact in the instant case had before him the evidence presented by both the police and the defendant on *voir dire* and during the cases in chief. While defense counsel's obvious purpose in cross-examining the police officer was to attempt to elicit an admission of threats with regard to arrest or prosecution of other

persons, one of whom was stipulated to live at No. 23, 980 Caldwell, these were vigorously denied on *voir dire* by the officer and on subsequent direct examination by the prosecutor. The trier of fact had to decide whether the defendant's statements made during *voir dire* were false and the statements by the police were true, and this does not compel the conclusion that the state failed in its burden of proof. If the court believed the testimony by the police, there then follows the conclusion that there was no coercion and the evidence was admissible.

III

CORPUS DELICTI

While proof of the *corpus delicti* must be the best evidence available, direct and positive evidence is not essential. It may be established, under Ohio laws, by circumstantial evidence where the inference of the happening of a criminal act complained of is the only probable or natural explanation of the proved facts and circumstances. *State* v. *Nevius,* 147 Ohio St. 263 (1947).

In the instant case, there was a tangible *corpus delicti* and there is sufficient corroborative evidence to implicate the petitioner in order to show a crime has been committed. *Smith* v. *United States,* 348 U.S. 147, 154 (1954). The implication of the defendant with possession and possession for sale of narcotics became obvious while he was at the Caldwell address, and it was sufficient to justify a finding of guilt on that basis alone. His statement of ownership of the materials was made not as a part of an accusatorial interrogation but, rather, was volunteered as the police searched his bedroom. His supposed common-law wife lived at the address and the man named "Ralph" (as the informant had

described him) arrived during the search, armed with a loaded revolver. Under this set of circumstances, the corroborative evidence is most damaging.

Therefore, even if the statements made at the police station describing only the over-all narcotics operation in which the defendant was engaged should have been excluded, arguendo, there are adequate grounds for conviction.

IV

THE SEARCH

Terry v. *Ohio*, 392 U.S. 1 (1968), authorizes a pat-down search for weapons on the basis of reasonable cause to believe that persons are contemplating crime and are armed. This proposition would be applicable in the instant case if it be ascertained that there was an invalid warrant. Should that be the case, there is every reason to believe that, under the circumstances, the police had reasonable cause to fear that defendant was armed. There was prima facie evidence before them that illegal dealing in narcotics was taking place.

Should, however, the warrant be held valid, there is within the purview of that authority the right to conduct a personal search, and evidence recovered therefrom is not inadmissible at trial on a charge of carrying a concealed weapon.

CONCLUSION

For the foregoing reasons the State of Ohio respectfully urges that the writ requested in defendant's petition be denied.

GEORGE C. SMITH
Prosecuting Attorney
Franklin County, Ohio
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Brief in Opposition were mailed in triplicate to Jerry Weiner, 171 East Livingston Avenue, Columbus, Ohio 43215 and to Joseph C. Cizmadia, V, 169 East Livingston Avenue, Columbus, Ohio 43215, this 19th day of March, 1973.

GEORGE C. SMITH
Prosecuting Attorney